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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

RAY VAUGHN,
Petitioner,
versus
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
Respondent.

No. 750

BRIEF

In Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi.

C. R. BOLTON,
Attorney for Respondent,
BOLTON & DOTY,
Tupelo, Mississippi.

D. W. HOUSTON, SR. & JR.,
Attorneys for Respondent,
Aberdeen, Mississippi.

Of Counsel:
JAMES L. HOMIRE
and
WALTER W. DALTON,
Attorneys,
Frisco Building,
St. Louis, Missouri.

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In Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi.

The writ of certiorari applied for in this case should not be granted for the following reasons:

(1) The Federal question involved has been determined heretofore by this court.

(2) The state court has not decided this case in conflict with the applicable decisions of this court, but to the contrary has decided it in accord with such decisions.

(3) The review of the matter by this court would amount to nothing more than a second appeal for the petitioner and would have no special and important significance.

I.

STATEMENT OF THE CASE.

As stated in the first paragraph on page 6 of the petition, in response to motion of the defendant to require plaintiff to be more specific, he amended his complaint to rely solely on a violation of the Safety Appliance Act as a ground for recovery and dismissed any claim of negligence otherwise, and the case was tried on this issue alone.

No provision of the Safety Appliance Act imposes liability for injuries suffered, but it is a statute enacted for the safety of employees and imposes a penalty for violation. In this case, the plaintiff relied on an alleged violation of the act to constitute negligence from which liability was incurred. He made no showing whatever of actual negligence. He made no proof of any defect in the air brake in question. He based his case on the theory that the air brake operated improperly on this particular occasion. The only evidence in support of it was the opinion of an air brake mechanic, who had retired several years prior to this accident, and had never examined any part of this mechanism, or knew anything about it. The evidence of this expert witness, which was based altogether on hypothetical statements, was that in his judgment this brake on this particular car was defective. This was all

of the evidence of the plaintiff to establish any defect in the air brakes on the car in question. The evidence of the conductor, who examined the car, was that he found nothing defective. The evidence in the case was further that this car was a car of another railroad and it was traced for the period during which it was on the railroad of the defendant and for one week afterwards until the car was off of its line. During this period of time, it was shown that the air brakes on this car operated perfectly prior to the time of the accident and after the time of the accident. The case presented by petitioner was one which rested solely on the question of the defendant having violated the Safety Appliance Act, and whether or not the Act required air brakes at this time.

II.

THE SUPREME COURT OF MISSISSIPPI FOLLOWED THIS COURT IN THE CONSTRUCTION AND APPLICATION OF THE SAFETY APPLIANCE ACT.

This court has consistently held that the air brake provision of the Safety Appliance Act dealt with the running of the train and not with switching operations. **United States v. Erie Railroad Company, 237 U. S. 401, 59 L. Ed. 1019.** This holding of the court has been adhered to in all of the decisions since that time, and remained the law through the trial of this case and has been reaffirmed as such by this court since that time. If the movement in question was a switching operation, then according to the unwavering decision of this court, air brakes were not required by the Safety Appliance Act, and there was no violation of that act, and liability could not be predicated on it. The decision of the Supreme Court of Mississippi sought to be reviewed was in complete accord with the

decisions of this court on this question and cites them as its authority. Referring to the Erie case, and other cases in line with it, the Supreme Court of Mississippi used the following language:

> "So far as we can tell there is no decision to the contrary and the appellee has certainly cited nothing to the contrary."

This is admitted by petitioner on page 10, where he says:

> "We see no conflicts in the instant case and the case of U. S. v. Erie Railroad Co., 237 U. S. 401, 54 L. Ed. 1019."

Since the decision of this case in the Supreme Court of Mississippi, this court in the case of **United States v. Seaboard Airline Railroad Company** followed the decision of the Erie case that

> "switching operations were not train movements within the meaning of the Act" (Decided November 9, 1959).

III.

PETITIONER SEEKS A FACTUAL DECISION.

Petitioner does not seek certiorari on the ground of conflict in the decision of the Supreme Court of Mississippi and this court, but he seeks a review of the facts of this particular case. On page 10 of the petition he states:

> "We see no conflicts in the instant case and the case of U. S. v. Erie Railroad Company, 237 U. S. 401, 59 L. Ed. 1019, which was relied upon as controlling authority in the Mississippi Supreme Court."

The gist of his contention is that because this car in question had been in the train in interstate commerce prior to

the happening of this accident, it was still covered by the Safety Appliance Act even though at the time it was being switched out of the train and no longer formed a part of the train. The record shows that the car in question had reached its destination on this train and was being set out of the train. This is so stated in the decision of the Supreme Court on page 16 of the petition. In his amended complaint, page 25 of the record, plaintiff alleges that this was a switching movement. In his testimony, page 79 of the record, he stated it was a switching operation. His conductor, who was also his witness, on page 97 of the record, said it was a switching operation. It is stated in the opinion of the Supreme Court of Mississippi that this car had been disconnected from the train and engine and switched on to another track. Notwithstanding this, petitioner seeks to claim it as part of the train and covered by the provision for air brakes even though it had been disconnected and removed therefrom. This is contrary to the decision in the Erie case which states:

> "But it is otherwise with various movements in railroad yards whereby cars are assembled and coupled into outgoing trains and whereby incoming trains which have completed their runs are broken up."

In effect, petitioner is seeking to make it a violation of the Safety Appliance Act to have air brakes which did not operate at a time when under the physical circumstances it was impossible for them to operate. The statute requires brakes by which the engineer can control the train. In this case, the car had been detached from the train and from the engine by the petitioner himself and it was physically impossible for the air brakes to operate. Yet, petitioner is seeking to make the failure to do so a violation of this statute because the car had theretofore been in a train which was controlled by the statute. As stated by this court, the statute does not apply when the

cars are taken out of the train and the train is being broken up and the cars switched out. The Supreme Court of Mississippi is not in conflict with the cases cited by petitioner and no conflict has been shown.

Particular emphasis is placed by petitioner on the case of **Coray v. Southern Pacific Railroad Company, 69 S. Ct. 275, 335 U. S. 5, 20.** That case shows no error in the decision of the Supreme Court of Mississippi. In that case, the air brakes in question were on a car in a train proceeding along the railroad to its destination, controlled by the engineer in charge of the engine. There was no switching movement. The car in question had not been disconnected from the train as was the case in this case and actual defective condition of the air brakes was shown by the evidence in that case.

IV.

FACTS CITED ARE IN DISPUTE.

Petitioner's statement that facts were utterly without dispute is incorrect. His statement in subsection (d) page 11 that there was a defect or inefficiency in the air brakes on the car in question while being hauled in a train was without dispute is not correct. There was no showing of any defect or inefficiency, and the conductor, who was a witness for the petitioner to prove air on the third car, stated that he found no defect when he bled off the air. He said that the car and brakes operated perfectly.

Likewise, subsection (e), page 11, is not without dispute; to wit, that the air brakes went into emergency shortly after the car was disconnected from the train. The evidence does not go that far. The evidence is that when the train stopped, the conductor went back and found

"some air" on the third car which he bled off and thereby released the brake and the car operated perfectly thereafter. There is no showing whether the air had been left on the car and had failed to be fully bled off or whether for some reason it was applied, according to the theory of the former air brake mechanic.

To say the least of it, these facts are not without dispute.

V.

CONCLUSION.

The grant of certiorari and the review of this case by this court would amount only to a second hearing on the facts of the case and would add nothing to applicable law for the guidance of the public in the future. It would amount to a decision on the facts of this particular case which, even according to petitioner's theory, arose from a freak accident, the circumstances of which would be most improbable to occur in the future. The decision on the facts would be of a particular case. Any decision on the law different from that of the Supreme Court of Mississippi would be in conflict with the former and established decisions of this court and produce confusion instead of clarity.

Reduced to last analysis, petitioner does not deny that the Act does not apply to switching operations nor that this court has so held and the Mississippi court's decision is in accord with it. In effect, he is asking this court to hold that the facts in this particular case did not constitute switching, although it was called switching in his pleadings (page 25 of record), he testified it was switching and so did his conductor (pages 79 and 97 of record) and the car had been taken out of the train, disconnected from the engine and was being moved to another track. No public

benefit will be served by a review of the facts of this particular case.

Wherefore, respondent respectfully submits that petitioner is not entitled to have this cause reviewed again and that his petition for writ of certiorari to the Supreme Court of Mississippi should be denied.

Respectfully submitted,

C. R. BOLTON,
Attorney for Respondent,

BOLTON & DOTY,
Tupelo, Mississippi.

D. W. HOUSTON, SR. & JR.,
Attorneys for Respondent,
Aberdeen, Mississippi.

Of Counsel:

JAMES L. HOMIRE,
and
WALTER W. DALTON,
Attorneys,
Frisco Building,
St. Louis, Missouri.

Certificate of Proof of Service.

I, C. R. Bolton, attorney for the respondent herein, and a member of the bar of the Supreme Court of the United States, hereby certify that I received copy of the petition for writ of certiorari on February 26, 1960, and I am this day serving copies of the above and foregoing brief in

opposition to the said petition by mailing same in properly addressed envelopes with first class postage prepaid to Honorable Frank E. Everett, Jr., Counsel for Petitioner, First National Bank Building, Vicksburg, Mississippi; Honorable William W. Ramsey, Attorney, First National Bank Building, Vicksburg, Mississippi, and Honorable Sam H. Long, Attorney, Tupelo, Mississippi.

This the 24 day of March, 1960.

C. R. Bolton,
Attorney for Respondent,
Tupelo, Mississippi.